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IN THE
Supreme Court of the United States
OCTOBER TERM, 1995

UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY, AFL-CIO; and UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO,

Petitioners,

v.

JANET RENO, *et al.*,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF OF THE NATURAL RESOURCES DEFENSE COUNCIL, INC. AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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D. Brooks, *America Looks to the Sea: Ocean Use and the National Interest* (1984) 7, 8
L. Clarke, "Oil Spill Fantasies," in *Atlantic* (Nov. 1990) 7
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E. Kaplan, "California: Threatening the Golden Shore," in *The Politics of Offshore Oil* (J. Goldstein ed. 1982) 3, 4, 8
W. Marx, *Oceans: Our Last Resource* (1981) 5
J. Teal and R. Horwarth, "Oil Spill Studies: A Review of Ecological Effects, in *Environmental Management*, Vol. 8, No. 1 (1984) 5
United States Congress, Office of Technology Assessment, *Coping with an Oiled Sea: Background Paper* (1990) 7

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United States Dept. of Commerce, National Oceanic and Atmospheric Admin., *Summary of Effects of the Exxon Valdez Spill on Natural Resources and Archeological Resources* (March 1991) 7

United States Dept. of Interior, Minerals Management Service, *Accidents Associated with Oil and Gas Operations: Outer Continental Shelf 1956-1990* (1992) 6

United States Dept. of Interior, Minerals Management Service, Operations and Safety Management, *Offshore Stats*, Second Quarter 1995 5

United States Dept. of Interior, Minerals Management Service, *Outer Continental Shelf Oil & Gas Leasing Program: 1997-2002, Draft Environmental Impact Statement* (1996) 3, 4, 5, 6, 7

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INTERESTS OF AMICUS

The Natural Resources Defense Council ("NRDC"), a non-profit corporation, has offices in New York, Washington, D.C., San Francisco and Los Angeles, and a national membership of more than 250,000. NRDC is dedicated to the preservation, enhancement and defense of the human environment and natural resources of the United States. In carrying out these objectives, NRDC has undertaken efforts, *inter alia*, to obtain clean air,

clean water and toxic substances control, including activities to ensure effective environmental protection in the coastal and outer Continental Shelf areas. These efforts have included, for the past 25 years, pressing for effective coastal protection legislation, issuing numerous reports and studies, monitoring government agencies and industry and, where necessary, initiating appropriate litigation, such as in the case of the *Exxon Valdez* oil spill. NRDC and its members have a substantial interest in the issues presented in this case and file this brief *amicus curiae* with the consent of the parties as provided for in the Rules of this Court.

INTRODUCTION

At first glance, the decision of the Court of Appeals seems to present solely an issue of immigration law turning on the interplay between United States immigration laws and the Outer Continental Shelf Lands Act ("OCSLA"). On closer analysis, however, its holding actually presents a significant question of national environmental protection: whether it is lawful to permit unregulated access to environmentally sensitive oil and gas production facilities on the outer Continental Shelf ("OCS") by persons whom Congress has deemed too dangerous to be allowed within the continental United States because they present a risk of terrorism or sabotage. In light of the ecological importance of the OCS and our nation's coasts—and the serious environmental consequences that would result from a single blowout or other oil platform disaster—this Court should grant certiorari to resolve the important issues presented by the decision below.

ARGUMENT

I. THE OUTER CONTINENTAL SHELF AND RELATED MARINE AND COASTAL ECOSYSTEMS ARE IMPORTANT FRAGILE RESOURCES AT RISK OF SERIOUS HARM FROM A BLOWOUT OR OTHER OIL PLATFORM DISASTER

A. The OCS and the marine world above it cover an area almost one-tenth the size of the continental United States, and are of immense ecological importance. OCS waters support complex communities of sea life and numerous endangered species. The Gulf of Mexico region alone harbors 28 species of marine mammals, including 17 species of whales; countless marine bird species, eight of which are threatened or endangered; an enormous diversity of fish resources; and five species of sea turtles. United States Dept. of Interior, Minerals Management Service, *Outer Continental Shelf Oil & Gas Leasing Program: 1997-2002, Draft Environmental Impact Statement,* Vol. I, at pp. III-13 - III-29 (1996) ("*1996 Statement*"). OCS waters off Alaska contain some of the largest salmon runs in the world. *Id.* at III-101. And, in the Santa Barbara Channel off California, "most of the endangered whales of the world either live or migrate through the channel area. Gray, sei, sperm, blue, fin, humpback, and pacific right whales have all been seen . . . ." E. Kaplan, "California: Threatening the Golden Shore," in *The Politics of Offshore Oil* 10 (J. Goldstein ed. 1982) ("*Politics of Offshore Oil*"). *See also 1996 Statement,* Vol. I, at p. III-159 - III-160.

The sea floor itself is blanketed with hundreds of species of mollusks, crustaceans, worms, sponges, echinoderms and other fauna, as well as seagrasses and algae—benthos critical to the biological infrastructure of the waters above. *See 1996 Statement,* Vol. I, at pp. III-34 - III-36. Benthic habitats off Florida and other gulf states contain "live bottoms," large areas completely covered with diverse epibiota (*id.* at p. III-34); off Alaska, vast

"boulder patches" and nutrient-rich kelp beds are home to soft corral, sea anemones, jellyfish and many other organisms. *Id.* at pp. III-105 - III-106.

Ecosystems directly related to the OCS—coastal areas and islands—are no less vital. Bristol Bay, Alaska supports 870,000 fur seals, 100,000 sea lions, 50,000 Pacific Walrus and 20,000 sea otters. D. Holing, *Coastal Alert: Ecosystems, Energy, and Offshore Oil Drilling* 6 (1990) ("*Coastal Alert*"). Over 3 million migratory birds travel the mid-Atlantic coastal flyway each year; and a single area along the New Jersey shore is one of the most important regions in the Western Hemisphere for migratory shorebirds. *Id.* at 3-4. The Central California coastal region contains a diverse array of seals and sea lions and seven endangered species of whales, and is home to the endangered California sea otter. *1996 Statement*, Vol. I, at p. 159; *Coastal Alert* at 5-6. San Miguel Island in the Santa Barbara Channel maintains the world's largest and most diverse pinniped community:

> California sea lions, harbor seals, northern fur seals, northern elephant seals, and Stellar sea lions all breed on the islands, and the endangered Guadalupe fur seal has been known to haul out at Point Bennett. Nine species of marine birds breed in colonies on several of the islands. Over 168 species of marine birds inhabit the channel and coast. The Santa Barbara island chain is also a major stopping place for migratory birds. Seven rare and endangered birds rely on the channel's habitats, including the least tern and two varieties of rails.

Politics of Offshore Oil at 9-10.

Healthy coastal and marine ecosystems, in turn, are crucial to our nation's economic well-being. Fisheries in the Gulf of Mexico landed nearly 1.7 billion pounds of fish worth over $630 million in 1993. *1996 Statement*, Vol. I, at p. III-52. The salmon fishery in Bristol Bay,

Alaska is valued in excess of $250 million annually and employs an estimated 10,000 people (*Coastal Alert* at 3, 6); Bristol Bay, the Bering Straits and other Alaskan OCS areas also produce substantial numbers of Red King Crabs and other highly valuable shellfish. *1996 Statement*, Vol. I, at p. III-104. *See also* W. Marx, *Oceans: Our Last Resource* 297, App. 1 (1981). And, tourists spent $27 billion in California's coastal communities in 1988 alone, accounting for 86 percent of the state's total tourist revenue. *Coastal Alert* at 4.

B. There are now more than 3,800 oil and gas platforms on the OCS. Offshore oil and gas production operations currently produce approximately 400 million barrels of crude oil and 5 trillion cubic feet of natural gas each year. United States Dept. of the Interior, Minerals Management Service, Operations and Safety Management, *Offshore Stats*, Second Quarter 1995, at pp. 2-3. The operations have increased dramatically over the past 40 years, and the U.S. Minerals Management Service plans to hold additional OCS oil and gas lease sales over the next five years, entitling the buyers to exploration and production rights on vast expanses of the OCS off Alaska and in the Gulf of Mexico. United States Dept. of the Interior, Minerals Management Service, *Proposed Outer Continental Shelf Oil & Gas Leasing Program, 1997-2002: Decision Document*, pp. 4-7 (1996).

C. Petroleum hydrocarbons are highly toxic to a wide variety of marine organisms, even at very low concentrations.[1] According to the Department of Interior, 36 signifi-

[1] In addition to direct lethal effects, petroleum hydrocarbons can exert sublethal effects, including reduced growth, altered feeding behavior and lower reproductive success. Oil spills have resulted in massive fishkills, mortality of fish eggs and larvae, spawning inhibition, slower fish growth rates and declines in fish catches (*see* J. Teal and R. Horwarth, "Oil Spill Studies: A Review of Ecological Effects, in *Environmental Management*, Vol. 8, No. 1, at pp. 35-36 (1984)); decimation of substantial numbers of plants,

cant spills which involved more than 15.5 million gallons occurred between 1964 and 1990 as a result of oil and gas operations on the OCS. United States Dept. of Interior, Minerals Management Service, *Accidents Associated with Oil and Gas Operations: Outer Continental Shelf 1956-1990*, p. 7 (1992). In 1969, after a blowout at an oil platform in the Santa Barbara Channel off the California Coast, oil gushed for 12 days, and 50,000 to 70,000 barrels of oil spread over 660 square miles. Over 150 miles of coastline were fouled and thousands of birds, mammals and fish were killed. *Coastal Alert* at 17-18.

More recently, the 1989 *Exxon Valdez* tanker accident in Alaska's Prince William Sound demonstrated the disastrous effects of a massive oil spill. For example:

- Approximately 1,000 sea otters were killed outright, and abnormally high mortality rates among otters remained for at least 2 years in heavily oiled areas.
- Tens of thousands of birds, including 250 bald eagles, died immediately, and populations of bird species in certain areas declined up to 40% after the spill.
- Extremely important fish populations, including pacific herring and pink salmon populations, suffered injuries such as increased rates of egg mortality and larval deformities, reduced growth rates among juveniles, and possible genetic damage.

Exxon Valdez Oil Spill Trustee Council, *Exxon Valdez Oil Spill Restoration Plan: Draft Update on Injured Resources & Services*, pp. 4-15 (April 1996). *See also* United States

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marine mammals and birds that live in or frequent the shore zone (*1996 Statement*, Vol. I, at pp. IV-60 - IV-62); and, on the sea floor, significant long-term reduction of bacterial biomass, a staple of benthic organisms at the base of the marine food chain. *See, e.g.*, Griffiths, et al., "Long-Term Effects of Crude Oil on Uptake and Respiration of Glucose and Glutamate in Arctic and Subarctic Marine Sediments," in *Applied and Environmental Microbiology* (November 1981).

Dept. of Commerce, National Oceanic and Atmospheric Admin., *Summary of Effects of the Exxon Valdex Spill on Natural Resources and Archeological Resources* (March 1991).

Blowouts and spills are that much more dangerous because, for the most part, clean-up efforts simply do not work. Oil spill containment and clean-up capability is extremely limited, typically resulting in only 10% to 15% recovery of spilled oil. United States Congress, Office of Technology Assessment, *Coping with an Oiled Sea: Background Paper,* p. 1 (1990); *1996 Statement,* Vol. II, p. C-14. *See also* L. Clarke, "Oil Spill Fantasies," in *Atlantic* (Nov. 1990) (oil spill containment and cleanup technology demonstrably inadequate).

The Exxon Valdez spill proved how difficult it is to clean up spilled oil. The slick from the 257,000 barrel (or 10.8 million gallon) spill contaminated 1,244 miles of shoreline. A 6-month clean-up effort, waged by 11,000 people, 1,000 vessels, and more than 70 aircraft, and at a cost of more than $1.9 billion, recovered only 32,500 barrels of oil. Approximately 77,100 evaporated, leaving 147,000 barrels (or 6.17 million gallons) of oil in the environment. *Coastal Alert* at 19.

II. CONGRESS RECOGNIZED THE IMPORTANCE OF THE OCS ENVIRONMENT AND ACTED EXPRESSLY TO PROTECT IT IN THE 1978 OCSLA AMENDMENTS

Congress recognized the environmental importance of the OCS, and the danger that oil and gas development presented to it, when it enacted the 1978 OCSLA Amendments (Pub. L. 95-372, 92 Stat. 635) ("1978 OCSLA Amendments"). The amendments in large part were a response to the perceived "crisis" over global oil supplies (*see* D. Brooks, *America Looks to the Sea: Ocean Use and the National Interest* 102-03 (1984) *("America Looks*

to the Sea")), but Congress' commitment to encourage oil and gas production on the OCS was coupled with its strong intent to protect the environment from possible adverse effects of such development.

> The Santa Barbara blowout had national repercussions for the federal OCS program. . . . Instantly the people of Santa Barbara became politically active to fight the . . . destruction of their environment, and the repercussions . . . [were] felt in the passage of . . . the OCS Land Act amendments in 1978.
>
> . . . One of the key elements of the new strategy for energy self-sufficiency was . . . rapidly expanded OCS development that was to be conducted in a safe environmental system of checks and balances through amending the OCS Land Act of 1953. After four years of national debate the OCSLA amendments were passed in 1978 creating a careful process of environmental impact analysis at every step of the OCS development process.
>
> The OCSLA amendments called for a considerably expanded OCS [oil and gas development] program . . . . At the same time they included fairly stringent environmental safeguards . . . .

The Politics of Offshore Oil at 7. *See also America Looks to the Sea* at 12 (major issue faced by Congress in its efforts to expand OCS oil and gas production was "the adverse environmental . . . impacts feared by coastal states from accelerated OCS activity, especially in the so-called 'frontier' areas where such activity had not started yet").

Thus, upon introduction of the bill on the House floor, Representative John Murphy, Chairman of the House Select Committee on the Outer Continental Shelf, noted that "[r]ecent events have detailed the need for th[e] bill: offshore oil spills, here, off France, and in the North Sea [and] reports of shut-in wells." Vol. 124, Cong. Rec-

ord, 95th Cong., 2d Sess. 26779 (August 17, 1978). He therefore made it clear that the 1978 OCSLA Amendments would "make a profound contribution to the Nation's energy crisis *and do so in a manner that takes into account . . . the protection of our marine and coastal environment.*" *Id.* (emphasis added). *See also* H.R. Rep. No. 590, 95th Cong., 1st Sess. 107-10 (1977), *reprinted in* 1978 U.S. Code Cong. & Admin. News 1514-16 (describing series of oil spills and other environmental "catastrophes" on OCS).

Accordingly, the 1978 OCSLA Amendments included express declarations of Congress' intent to "minimize the likelihood of blowouts, loss of well control, fires, spillages . . . or other occurrences which may cause damage to the environment or to property, or endanger life or health" (43 U.S.C. § 1332(6)), and were replete with provisions directed at protection of the OCS environment. *See, e.g.,* 43 U.S.C. § 1334 (mandating regulations to give Interior Secretary authority to suspend or prohibit leases "if there is a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life) . . . or to the marine, coastal, or human environment"); 43 U.S.C. § 1346 (requiring Interior Secretary to study areas included in leases "to establish information needed for assessment and management of environmental impacts on the human, marine, and coastal environments of the outer Continental Shelf and the coastal areas which might be affected by oil and gas development"); 43 U.S.C. § 1348 (providing for strict enforcement of environmental regulations on the OCS).

The decision of the court below not only entirely ignores this central congressional purpose but would, if left undisturbed, fundamentally undermine it.

III. THE COURT BELOW FAILED TO EXPLAIN WHY CONGRESS WOULD ACT *SUB SILENTIO* TO INCREASE THE THREAT OF ENVIRONMENTAL HARM ON THE OCS WHILE AT THE SAME TIME ACTING EXPRESSLY TO PROTECT THAT ENVIRONMENT

As a result of the decision below, nonimmigrant aliens seeking to enter the OCS are exempt from the entry restrictions in the immigration laws, including provisions that bar aliens who are terrorists, saboteurs or known criminals. Congress has barred such persons from entry into the continental United States because of the danger they pose. *See* 8 U.S.C. § 1182(a)(1), (2) & (3). Yet, the Court of Appeals attributed to Congress an *unstated* intent that those same individuals be permitted to enter oil platforms and other structures found in some of the nation's most environmentally sensitive areas—structures otherwise subject to the strictest forms of environmental control—without any restriction whatsoever.

A single blowout or other oil platform disaster could have nightmarish consequences for the delicate ecosystems of the OCS and shoreward areas and the biological communities that thrive within them. In terms of clearly stated congressional policy on the OCS environment, then, the decision below is utterly mystifying. Why would Congress, acting to increase environmental safeguards on the OCS as it established a broad framework for oil and gas development, at the same time remove *sub silentio* immigration restrictions, thereby threatening environmental safety on the OCS?

It is this inherent contradiction in the reasoning of the court below that renders its decision fundamentally flawed, requiring this Court's independent review. And, as demonstrated in Chief Judge Edwards' strong dissent and in the argument presented by the petitioners before this Court, the Court of Appeals reached its precarious result by straying from the plain language of the statute

involved and from basic principles of statutory construction as well.

CONCLUSION

The Petition for Writ of Certiorari should be granted. The decision of the court below has incorrectly placed some of our nation's most pristine and valuable natural resources in serious jeopardy. Persons who, due to the risks they present, have been barred from *any* entry into the continental United States nevertheless have been allowed to work on some of the most environmentally sensitive facilities in existence. If this case involved such workers' operation of nuclear power plants in California or transportation of toxic substances in New Jersey, the correct result would be self-evident; it should be, likewise, for the equally important work at issue here.

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